

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re:

NEW SEABURY COMPANY LIMITED
PARTNERSHIP,

Debtor.

Case No. 97-12964-WCH
Chapter 11

NEW SEABURY COMPANY LIMITED
PARTNERSHIP,

Appellant,

v.

NEW SEABURY PROPERTIES, LLC,
Appellee.

Bankruptcy Appeal
Civil Action No. 04-11981-DPW

APPELLANT'S DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

The appellant, New Seabury Company Limited Partnership ("NSC"), pursuant to Federal Rule of Bankruptcy Procedure 8006, hereby designates the following items for inclusion in the record on appeal to the First Circuit Court of Appeals. In accordance with Bankruptcy Rule 8006, copies of these items are attached unless indicated below.

Items for Inclusion in the Record on Appeal

1. Stipulation Relating to Competing Plans of Reorganization, Objections to Confirmation, Motion for Reconsideration and Motion for Plan Modification by and between New Seabury Properties, LLC and New Seabury Company Limited Partnership filed in open court on May 29, 1998 (New Seabury Properties, LLC ("NSP") Trial Exhibit 7; NSC Trial Exhibit 3).
2. Fourth Amended Chapter 11 Plan of New Seabury Properties, LLC and Fourth Amended Disclosure Statement in Support of Plan of Reorganization Sponsored by New Seabury Properties, LLC.
3. Order Confirming Fourth Amended Plan of New Seabury Properties, LLC.

4. Transcript of Confirmation Hearing [COPY NOT AVAILABLE].
5. The Bill of Sale (NSP Trial Exhibit 10; NSC Trial Exhibit 4).
6. Motion of New Seabury Properties, LLC for Order, Pursuant to 11 U.S.C. § 105(A), (i) Directing and Compelling the Debtor to Deliver Certain Property to New Seabury Properties, LLC; (ii) Directing And Compelling The Debtor To Turnover To New Seabury Properties, LLC The Files Of The New Seabury Architectural Review Committee and (iii) Holding The Debtor's Principal, Christopher Burden, in Contempt of Court for Unjustly Refusing to Deliver the Architectural Review Committee Files to New Seabury Properties, LLC dated December 19, 1998.
7. Opposition of Debtor to Motion of New Seabury Properties, LLC for Order, Pursuant to 11 U.S.C. § 105(A), (i) Directing and Compelling the Debtor to Deliver Certain Property to New Seabury Properties, LLC; (ii) Directing And Compelling The Debtor To Turnover To New Seabury Properties, LLC The Files Of The New Seabury Architectural Review Committee; and (iii) Holding The Debtor's Principal, Christopher Burden, in Contempt of Court for Unjustly Refusing to Deliver the Architectural Review Committee Files to New Seabury Properties, LLC dated January 12, 1999.
8. Order Dated March 12, 1999 Granting Motion of New Seabury Properties, LLC for Order, Pursuant to 11 U.S.C. §105(a), Directing and Compelling the Debtor to Deliver Certain Property to New Seabury Properties LLC.
9. Notice of Appeal to District Court filed by New Seabury Company Limited Partnership Dated March 18, 1999.
10. Brief of Appellant New Seabury Company Limited Partnership dated June 7, 1999.
11. Brief of Appellee New Seabury Properties, LLC dated June 30, 1999.
12. Order of Remand of United States District Court, District of Massachusetts dated October 21, 1999.
13. Amended Joint Pretrial Stipulation Regarding Issue of Amount of Cash Generated by Real Estate Brokerage Segment dated June 18, 2002.
14. Supplement to Amended Joint Pretrial Stipulation Regarding Issue of Amount of Cash Generated by Real Estate Brokerage Segment dated June 20, 2002.
15. Second Supplement to Amended Joint Pretrial Stipulation Regarding Issue of Amount of Cash Generated by Real Estate Brokerage Segment dated June 20, 2002.
16. Day 1 of trial transcript, *In Re: New Seabury Company Limited Partnership*, No. 97-12964-WCH (June 21, 2002).
17. Day 2 of trial transcript, *In Re: New Seabury Company Limited Partnership*, No. 97-12964-WCH (July 2, 2002).

18. Day 3 of trial transcript, *In Re: New Seabury Company Limited Partnership*, No. 97-12964-WCH (July 9, 2002).
19. Second Amended Disclosure Statement to Debtor's Second Amended Plan of Reorganization and Debtor's Second Amended Plan of Reorganization.
20. Ex Parte Motion of New Seabury Properties LLC for Order Directing Rule 2004 Examination and for Production of Documents dated November 3, 1997.
21. Letter/memorandum dated January 28, 1998 from counsel to NSP to counsel to Debtor (NSC Trial Exhibit 8).
22. Internal Profit and Loss Statements of New Seabury Properties, LLC for period of 1/01/98 through 9/18/98 (NSC Trial Exhibit 18).
23. Internal Profit and Loss Statements of New Seabury Properties, LLC for period of 9/19/98 through 12/31/98 (NSC Trial Exhibit 19).
24. New Seabury Company Consolidated Financial Statements for periods ending December 31, 1991, December 31, 1992, December 31, 1993, December 31, 1994, December 31, 1995, December 31, 1996, December 31, 1997 and August 31, 1998 (NSP Trial Exhibit 1).
25. Balance sheet of Debtor for period ending December 31, 1996 (NSC Trial Exhibit 9).
26. Balance sheet of Debtor as of December 31, 1997 (NSC Trial Exhibit 11).
27. Balance sheet of Debtor as of May 31, 1998 (NSC Trial Exhibit 12).
28. Consolidated financial statements of Debtor for periods ending 12/31/97 and 12/31/96 (NSC Trial Exhibit 13).
29. Income statement of NSC Real Estate Operations for period consisting of January 1, 1998 through September 18, 1998 (NSC Trial Exhibit).
30. New Seabury Properties financial statements for period ending 12/31/98 (Exhibit 5 to Wayne Kapral deposition transcript; NSC Trial Exhibit 16).
31. Analysis of Real Estate Business Internal Profit and Loss Statements for twelve month periods ending December 31, 1990 through December 31, 1997 and for nine month period ending September 30, 1998 (NSP Trial Exhibit 2).
32. Memorandum dated August 6, 1998, from Sandra Bartlett to Robert Michaelson (NSP Trial Exhibit 3).
33. Schedule F to the Debtor's Schedules of Assets and Liabilities, including amendments thereto (NSP Trial Exhibit 12).
34. NSP's records showing Real Estate Credits redeemed since January 1, 1999 (NSP Trial Exhibit 13).

35. Letter from Arlene Goldberg Hoxie to Mr. and Mrs. Martin S. Gordon dated January 27, 1997 (NSP Trial Exhibit 14).
36. New Seabury Company Limited Partnership Financial Statements for year ended December 31, 1995 prepared by Coopers & Lybrand L.L.P. (NSP Trial Exhibit 15).
37. List of outstanding Real Estate Credits as of November 30, 2001, prepared by NSP (NSP Trial Exhibit 5).
38. Letter dated May 28, 1985, from the Debtor to Donald Brabants (NSP Trial Exhibit 6).
39. Expert report of Tofias, P.C. dated May 28, 2002 (NSC Trial Exhibit 15).
40. Balance sheet of Debtor as of March 31, 1997 (NSC Trial Exhibit 10).
41. Internal Profit and Loss Statement of Membership Division of New Seabury Properties, LLC for period 9/18/98 through 12/31/98 (NSC Trial Exhibit 17).
42. Post-Trial Brief of New Seabury Properties, LLC dated October 15, 2002.
43. Post-Trial Brief of New Seabury Company, LP dated October 18, 2002.
44. Post-Trial Reply Brief of New Seabury Properties, LLC dated November 8, 2002.
45. Reply Brief of New Seabury Company, LP dated November 8, 2002.
46. Memorandum and Order of Judge Hillman dated February 7, 2002 (sic).
47. Notice of Appeal by New Seabury Properties, LLC dated February 20, 2003.
48. Brief of Appellant, New Seabury Properties, LLC dated May 14, 2003.
49. Brief of Appellee, New Seabury Company Limited Partnership dated June 5, 2003.
50. Reply Brief of Appellant, New Seabury Properties, LLC dated June 23, 2003.
51. Memorandum and Order of United States District Court, District of Massachusetts, dated March 5, 2004.
52. Memorandum on Remand Regarding Issue of Amount of Cash Generated by Real Estate Brokerage Segment of New Seabury Company Limited Partnership dated May 21, 2004.
53. New Seabury Properties' Response to Debtor's Memorandum on Remand Regarding Amount of Cash Generated by Real Estate Brokerage Segment Dated June 4, 2004.
54. Memorandum of Decision on Second Remand Dated July 20, 2004.
55. Notice of Appeal of New Seabury Company Limited Partnership to United States District Court dated July 29, 2004

- 56. Brief of Appellant, New Seabury Company Limited Partnership dated October 15, 2004.
- 57. Brief of Appellee, New Seabury Company Properties, LLC dated October 29, 2004.
- 58. Reply Brief of Appellant, New Seabury Company Limited Partnership dated November 10, 2004.
- 59. Order of Dismissal of United States District Court, District of Massachusetts (J. Woodlock) dated March 23, 2005.
- 60. Notice of Appeal of Order of Dismissal by New Seabury Company Limited Partnership dated March 24, 2005.

Respectfully submitted,

NEW SEABURY COMPANY LIMITED
PARTNERSHIP,

By its attorneys,

HOLLAND & KNIGHT LLP

/s/ John J. Monaghan
John J. Monaghan (BBO #546454)
Lynne B. Xerras (BBO #632441)
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Dated: April 4, 2005

CERTIFICATE OF SERVICE

I, John. J. Monaghan, counsel to New Seabury Company Limited Partnership, do hereby certify that on the 5th day of April, 2005, I served a copy of the foregoing Designation of Items to Be Included in the Record upon the below listed party by hand delivery:

Daniel E. Rosenfeld, Esq.
Kirkpatrick & Lockhart LLP
75 State Street
Boston, MA 02109

/s/ John J. Monaghan _____
John J. Monaghan

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